193 .
(Aug 3)

File No. 236 35
Serial Nos. / 2 .

GENERAL AND REVENUE SECRETARIAT.

Serial Nos

Part B for June 1936

SUBJECT.

e by Mr
apeet of the ... Banya-
(... Chowkidar ...
(Civil Surgeon ...

Serial No.

H

The facts of the case are explained in the D.'s letter dated 20th inst. The total amount of arrears due from the Kodiya tenant whose right, title, and interest in the property was purchased for Rs 15-00, was Rs 8579-1-3. Towards this, the sale amount of Rs 15-00 has been adjusted and the balance still due is Rs 7079-1-3 which is now proposed for remission on the ground that Mr. Raghunatha Rao is not residing within the State and that he does not possess any property in Dodaballi Taluk so much so that the amount has become irrecoverable.

The case of the mortgagee of the

NOTE.—Contn. Sheet

WD 03594—GPB—30,000—18-7 35

property has also been examined by Govt who have said in the concluding portion of the G.O. dated 26.8.1933 that the grounds urged by them are not substantial.

The Public Prosecutor Bezwada Division, is also stated to have opined that the Remission of the amount in question will not in any way affect the Mutta-Jodidar as against the said mortgagees, as the mortgage was not made with the consent or knowledge of the Mutta.

The Remission of the amount viz Rs 7079-1-3 is submitted for orders. Law Section may also be consulted in the matter.

Messrs. M. Subba Rao and M. Nagabhushana Rao, mortgagees of the lands are anxious to realize the money lent by them to Mr. C. Raghunatha Rao, the Kadim tenant of Sangarikalle. That is why they appealed to Govt. against the orders of the Revenue Comr. regarding the sale of the right, title and interest of Mr. C. Raghunatha Rao in the lands.

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W

They have obtained a decree against Mr. C. Raghunatha Rao. If Govt. wait till the final disposal of this decree, they may be able to realize a portion of the arrears amounting to Rs 7079-1-3 due by Mr. C. Raghunatha Rao ~~Rs 7079-1-3~~ Further it is a point for consideration whether the Civil Courts are not likely to consider the claim of Messrs. M. Subba Rao and M. Nagabhushana Rao on the Kadim tenancy of the lands, since they have lent money ~~to~~ to the Kadim tenant. The Law Section may be consulted on this point, as the Swamigalu of the Sivaganga Matt seems to have some misgivings on this point. It is therefore a point for consideration whether the remission of the amount due to the Matt should not be postponed, especially as neither the Govt. nor the Matt are likely to lose anything by doing so.

~~Rao~~
20/1

Law Section)

22/1

NOTE.—Contn. Sheet.

Law
Note
27/1

WD 03591—GPB—30,000—18-7-35

The mortgagee cannot have any claim against the properties as the rents due to a superior holder to an inferior holder is a first charge under sec 96 A L.R.C. Since Rajamanikkam Rao is said to possess no properties, the recommendation of the M.C. for remission of the irrecoverable arrears may perhaps be accepted.

T.D. 7/12

The rent due from the Kasikan tenant on Rajamanikkam may be a first charge under Sec 96A Land Rev Code. But in this case what seems to have been sold & purchased is only the right, title & interest of the defaulter. The mortgagees have therefore still a claim over the property and if the arrears of revenue still due are written off, the Asst will be compelled to fall back upon only the purchase at the sale in any contest that may hereafter arise between the mortgagees & the Asst. It is not clear how the mortgagees cannot have any claim against the properties merely because the mortgage was not with the consent

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of the Mutt. I find from the G O of 26 August 1933 that the permanent tenant had full powers of alienation. The mortgagee can be defeated only by a sale held in enforcement of the first charge under sec 96A and that is the sale should be a sale free from encumbrances & not a sale merely of the right, title & interest of the defaulter. The records do not show any forfeiture order before the sale held on 23.5.30 and the legal effect of the sale is therefore a point of some doubt.

In these circumstances, the write off recommended is not perhaps desirable. But how to keep the debt alive so as to be claimed as against the Mortgagee is a question of some difficulty in this case. I think the best way is to set aside the sale of 23.5.1930 and to hold a fresh sale after passing a forfeiture order with due notice to the mortgagee.

"Forwarded with compts to the Govt advocate for favour of advice.

[illegible]

7 2 35

10 Returned with compliments.

Section 96 A. of the Land Revenue Code makes the kandayam payable by an inferior holder to a superior holder a first charge on the holding and if therefore it was sold for realising the kandayam due the entire interests possessed by the defaulter would pass to the purchaser. According to the - section unless a mortgage was created with the - consent of the superior holder it would not have priority over it and in this case there is no - suggestion that the superior holder consented to the mortgage. The occupancy rights possessed by the defaulter must therefore be deemed to have passed to the Mutt under the sale held on 26-2-1931. At best the Mortgagees could only claim that their right of redemption is not barred as they were given no notice before the mortgage property was put up for sale. Even if they want to exercise their right of redemption now, they will have to pay the whole amount due to the Mutt and then take back the property. In order to be able to claim the full amount of kandayam due in case the Mortgagees want to exercise their right of redemption, it would be desirable to keep the debt outstanding as otherwise the Mortgagees may claim that they would not be liable to pay anything more than the amount for which it was sold in the revenue sale. Since there is no urgency to write off the balance, I think it may be kept subsisting for some time longer. Even regarding the Mortgagees' right to redeem it may be urged that they had notice, as is evident from the several

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28.3.36

* It is doubtful in this case if what was sold was a holding or merely the right, title & interest of the defaulter -

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several Petitions and Appeals filed by them on the Revenue side.

11 But it seems to be unnecessary to consider this question of estoppel on their part in the light of what I have stated above. As what was payable by the defaulter was not Land Revenue due to Government it is very doubtful if the defaulter's F & D could be forfeited to Government as suggested by the Asst. Secretary. There is also no need, for reasons mentioned above, for cancelling the sale already held.

12 I am, therefore, of opinion that the balance due by the defaulter need not be written off now.

Government Pleader.

CSN/26.3.36

14 For further action

Asst Secy Revenue

Govt for info

11 The above opinion of the G A Pleader, if approved, be Communicated to the Asst. in reply to his letter dt 14.12.35

21/4/36

Gen Secy) Yes. Put up 4/6

1

2/7/4/36

12 APR 1936 37

8 APR 1936 GENERAL DEPARTMENT

NOTE—Contn Sheet

7/4 GPB—30 000—18-35

File No. of 193 .

General and Revenue Secretariat

1453 D. 2.4.51

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The M.C.

Muz 236—

OFFICE OF THE MUZRAI COMMISSIONER,
IN MYSORE,

JUDL. & REV. SECRETARIAT 675 1935 BRANCH

Dated, Bangalore, 13th December *193* 5.

FROM K. V. Anantaraman, Esq., B.A.,
~~N. MADHAVA RAO, Esq., B.A., B.L.,~~
Muzrai Commissioner in Mysore.

To

Venkatesa Iyengar, Esq., I.A.S.,
Secretary to the Government of His Highness
the Maharaja of Mysore,
General *Department.*

Remission of arrears due by Mr. Raghunatha Rao in respect of the jodi Sanyasihalli village, Devanahalli Taluk, belonging to the Sri Sivaganga Mutt.

Adverting to G.O.No.R.1044-45/L.R.440-31-3 dated 26-8-1933 dismissing the appeal of Mr. C. Raghunatha Rao and others re: the sale of jodi Sanyasihalli village, I have the honor to forward herewith the records received with letter No.Co-5391/34-35 dated 20-11-1935 from the Deputy Commissioner, Bangalore District, (copy enclosed) and to request that in the circumstances explained the remission of the irrecoverable arrears amounting to Rs 7,079-1-3 may be sanctioned as agreed to by the Swamigalu. The case of the mortgagees has also been previously examined by Government who have said in the concluding portion of the Government Order referred to above that the grounds urged by the former are not substantial.

I have the honor to be,

Sir,

Your most obedient servant,

Assistant Commissioner
for Muzrai Commissioner.
(absent from Head Quarters)

Rev. Branch W.C

May this be transfd
to the Rev Branch ?

19/12 This has to be dealt with on the Rev Branch staff 10 a.m.
19/12/35 — May Mr W.C.

The Rev Branch has requested ~~has~~ is
to furnish the L.R. file 440-31 &
refer to in the letter, as the same
has ascertained to have been
taken by that Branch and
promised by Mr C.B. Remarks
to be made available this month
BJS 21/1/36 Please put up a
position for this
3/1

The requisition slip with
the remarks of the Genl Records
has also sent to him last
month on 16.12.35
BJS 3/1/36 The Rev. Br
W.C.

The Collection has been
sent to Gen. Records &
it may be obtained from
the Records

CBR 31/1
Collection received
on 7/1/36
BJS

Letter No.CB-3501/34-35 dated 20-11-35 from the Deputy Commissioner Bangalore District, to the Huzrai Commissioner in Mysore.

I have the honor to state that Jodi Ranganahalli village in Devanhalli Taluk belonging to Sri Sivaganga Mutt is now under Government Management One Mr. C. Raghunatha Rao was the khadim tenant of the village. The arrears amounting to Rs 8,579-1-3 due from 1912-13 to 1929-30 were not paid by him and the right, title and interest of the defaulter in the village were sold on 23-5-1930. The Amildar purchased tenancy rights of Mr. Raghunatha Rao for Rs 1,500/- in the sale on behalf of the Mutt and the sale was confirmed on 26-2-1931 by the Deputy Commissioner.

Mr. C. Raghunatha Rao had mortgaged the village for Rs 5,500/- in the year 1922 to Messrs. Subba Rao and Nagabhushana Rao without the consent of the Mutt authorities. The mortgagees therefore preferred an appeal to the Revenue Commissioner for cancellation of the sale. But the sale was confirmed in appeal by the Revenue Commissioner. They applied to Government against the Revenue Commissioner's orders and the Government upheld the orders of both the Revenue Commissioner and the Deputy Commissioner in their order No.R.1044-45/L.R.440-31-8 dated the 25/26th August 1933. Thereupon a sum of Rs 1,500/- being the purchase amount was given credit to the account of the defaulter and action was taken to recover the balance of Rs 7,079-1-3.

The Amildar has reported that the defaulter Mr. Raghunatha Rao is not residing in the Mysore State, that he does not possess any properties in Devanhalli Taluk and that the amount is irrecoverable. The Amildar and the Sub Division Officer have therefore recommended that the sum of 7,079-1-3 may be written off the accounts.

The Mutt authorities were also consulted in the matter of remission of the arrears. The Agent of the Mutt has written to say that it is learnt that Messrs. Subba Rao and Nagabhushana Rao have advanced to the defaulter some money on the security of the village in question, that the former have sued the latter for the recovery of the amount due to them and have obtained a decree and that His Holiness has no objection to the remission of the amount if there is no trouble in future on account of the decree obtained by Messrs. Subba Rao and Nagabhushana Rao.

The Public Prosecutor, Bangalore Division, was thereupon consulted in the matter and he has opined that the remission of the amount from

the accounts will not in any way affect the Jutt as against Subba Rao and Nagabhushana Rao. As the mortgage to the latter was not made with the consent or the knowledge of the Jutt, the mortgagees cannot have any claim against the properties (vide Section 96 A).

I request you therefore to be so good as to kindly accord sanction for the remission of Rs 7,079-1-3 as irrecoverable after consulting the Law Officers of Government if necessary.

The connected file of records accompanies.

"C O P Y"

For Juzrai Commissioner.

Section ~~2-36-Rev~~

File No. 236-35

Serial No. 2nd

No. 1453

End Reads 39

To

The A.C in Alipore

Sir,

With reference to Govt. l
No e 684/35-36 dated 14.12.1935
Regarding Remission of arrears
due by the Raghunathpur in
of the Tehsil Lenyasikali Village
Devanahalli Taluk belonging to
the Sri Lakshmi Vajrangaji Mutt Ram
directed to communicate the
opinion of the Govt. Advocate
in the matter and to state
that as suggested ~~advised~~ by him
the balance due by the

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Date of issue 20-4-36

Signed by for B. Muddukrishnappa

Dates 11, 12 & 13 of the Notes

List of enclosures .....

Copied by .....

Examined by.....

7/4136

GOVERNMENT OF HIS HIGHNESS THE MAH

General and Revenue Secretariat

Dated, Bangalore, 20-4-36

No. 1453/Rev 236-35-7
Cent Records

From

Venkatesa Iyengar, Esquire, M.A.,
Secretary to the Government of His Highness the Maharaja of Mysore.

To

K.V. Anantaraman, Esquire, B.A.,
Muzrai Commissioner in Mysore, Bangalore.

Sir,

With reference to your letter No. C. 681/35-36 dated the 11th December 1935 regarding remission of arrears due by Mr. Raghunatha Rao in respect of the Jodi Sanyasihalli Village, Devanhalli Taluk belonging to the Sri Sivaganga Mutt, I am directed to communicate the opinion of the Government Advocate in the matter and to state that as suggested by him, the balance due by the defaulter need not be written off now.

The records received with your letter are herewith returned.

I have the honor to be,
S i r ,
Your most obedient servant,

General Secretary to Government.